



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0868]

RIN 1625-AA00

Safety Zone; Annual Fireworks Displays within the Sector Columbia River Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the regulation for safety zones for annual fireworks displays in the Captain of the Port Zone Columbia River. This action is necessary to provide for the safety of life on navigable waters during the fireworks displays. This rule includes updating 3 existing safety zones, adding 1 safety zone for a fireworks display that was previously published as a temporary regulation, and removing 10 safety zones for inactive fireworks displays.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-0868 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Dixon Whitley, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503-240-9319, e-mail msupdxwwm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

| | |
|--------|---------------------------------|
| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of proposed rulemaking |
| § | Section |
| U.S.C. | United States Code |

II. Background Information and Regulatory History

The Coast Guard is amending the regulation for safety zones for annual fireworks displays in the Captain of the Port Zone Columbia River, 33 CFR 165.1315. This rule is removing 10 safety zones for inactive fireworks displays, adding 1 safety zone for a new, recurring fireworks display for which we previously issued a temporary safety zone, and updating the date or location for 3 existing fireworks displays.

On September 28, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled, “Safety Zone; Annual Fireworks Displays within the Sector Columbia River Captain of the Port Zone” (83 FR 49028). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to annual fireworks displays. During the comment period that ended October 29, 2018, we received four comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Columbia River (COTP) has determined that potential hazards

associated with the fireworks displays create hazardous conditions for the maritime public because of the large number of vessels near the displays, as well as the noise, falling debris, and explosions that occur during the event. Because firework discharge sites pose a potential hazard to the maritime public, these safety zones are necessary in order to restrict vessel movement and reduce vessel congregation in the proximity of the firework discharge sites. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled events and provides the public accurate information regarding safety zones for annual fireworks displays in the Captain of the Port Zone Columbia River.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received four comments on our NPRM published September 28, 2018. The first comment suggested establishing new safety zones to replace the 10 inactive safety zones this rule is removing. There has been no indication from the sponsors of these events that they plan to continue them and our office has not received any additional information to warrant the addition of replacement safety zones. The second and third comments contained no suggested changes or recommendations. The fourth comment supported the creation of this rule. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The Coast Guard is removing 10 fireworks display safety zones in 33 CFR 165.1315 that are listed in Table 1 below because there has been no indication from the sponsors of these events that they plan to continue them.

Table 1. List of Safety Zone We Are Removing from 33 CFR 165.1315.

| | | | | |
|-------------------------|--------------|----------------|----------------|------------------|
| Cinco de Mayo Fireworks | Portland, OR | One day in May | 45°30'58" N | 122°40'12" W. |
|-------------------------|--------------|----------------|----------------|------------------|

| | | | | |
|------------------------------------------|-----------------|----------------------|-------------|---------------|
| Newport High School Graduation Fireworks | Newport, OR | One day in June | 44°36'48" N | 124°04'10" W. |
| Celebrate Milwaukie | Milwaukie, OR | One day in July | 45°26'33" N | 122°38'44" W. |
| Arlington 4th of July | Arlington, OR | One day in July | 45°43'23" N | 120°12'11" W. |
| East County 4th of July Fireworks | Gresham, OR | One day in July | 45°33'32" N | 122°27'10" W. |
| Rufus 4th of July Fireworks | Rufus, OR | One day in July | 45°41'39" N | 120°45'16" W. |
| Maritime Heritage Festival | St. Helens, OR | One day in July | 45°51'54" N | 122°47'26" W. |
| Lynch Picnic | West Linn, OR | One day in July | 45°23'37" N | 122°37'52" W. |
| First Friday Milwaukie | Milwaukie, OR | One day in September | 45°26'33" N | 122°38'44" W. |
| Willamette Falls Heritage Festival | Oregon City, OR | One day in October | 45°21'44" N | 122°36'21" W. |

Additionally, the Coast Guard is adding a new fireworks display safety zone. We previously issued a temporary safety zone (83 FR 30869, July 2, 2018) for that event, and after conferring with the event sponsor, we determined it will become a recurring fireworks display. This safety zone will cover all navigable waters within a 450-yard radius of the fireworks barge in the Willamette River located at approximately 45° 24'37" N, 122° 39'30" W in the vicinity of George Rogers Park in Lake Oswego, OR. The following will be added to the table in 33 CFR §165.1315:

| | | | | |
|-------------------------------------------------------|-----------------|-----------------|-------------|---------------|
| City of Lake Oswego 4 th of July Fireworks | Lake Oswego, OR | One day in July | 45°24'37" N | 122°39'30" W. |
|-------------------------------------------------------|-----------------|-----------------|-------------|---------------|

Finally, the Coast Guard is revising three existing fireworks display safety zones. These revisions include updating the date for 4th of July at Pekin Ferry to more precisely describe when the fireworks display will occur, correcting the wrong state listed for the

Independence Day at the Port and updating the location for the Leukemia and Lymphoma Light the Night Fireworks.

These updates will eliminate any confusion caused by the fireworks display safety zones listed in the 33 CFR 165.1315 table and any subsequently issued temporary safety zones resulting from changes to the dates or locations of the events. The regulatory text appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around these safety zones which will impact small designated areas of the Oregon coast, Tillamook Bay, the Columbia River and its tributaries, and the Clatskanie River for approximately 2 hours during the evening when commercial vessel traffic is normally low. Moreover, the Coast

Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zones, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually

and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves safety zones lasting less approximately two hours in duration that will prohibit entry within 450 yards of fireworks launch sites. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. In § 165.1315, revise paragraph (a) to read as follows:

§ 165.1315 Safety Zone; Annual Fireworks Displays within the Sector Columbia River Captain of the Port Zone.

(a) *Safety zones.* The following areas are designated safety zones: Waters of the Columbia River and its tributaries, waters of the Siuslaw River, Yaquina River, Umpqua River, Clatskanie River, Tillamook Bay and waters of the Washington and Oregon Coasts, within a 450 yard radius of the launch site at the approximate locations listed in the following table:

| Event Name (typically) | Event Location | Date of Event | Latitude | Longitude |
|------------------------------------------------------------------------|---------------------------|------------------------------|-----------------|------------------|
| Portland Rose Festival Fireworks | Portland, OR | One day in May or June | 45° 30'58" N | 122° 40'12" W |
| Tri-City Chamber of Commerce Fireworks/River of Fire Festival | Kennewick, WA | One day in July | 46° 13'37" N | 119° 08'47" W |
| Astoria- Warrenton 4 th of July Fireworks | Astoria, OR | One day in July | 46° 11'34" N | 123° 49'28" W |

| | | | | |
|-------------------------------------------------------------------------------|--------------------|-----------------|--------------|---------------|
| Waterfront Blues Festival Fireworks | Portland, OR | One day in July | 45° 30'42" N | 122° 40'14" W |
| Florence Independence Day Celebration | Florence, OR | One day in July | 43° 58'09" N | 124° 05'50" W |
| Oaks Park Association 4 th of July | Portland, OR | One day in July | 45° 28'22" N | 122° 39'59" W |
| City of Rainier/Rainier Days | Rainier, OR | One day in July | 46° 05'46" N | 122° 56'18" W |
| Ilwaco July 4 th Committee Fireworks/ Independence Day at the Port | Ilwaco, WA | One day in July | 46° 18'17" N | 124° 02'00" W |
| Splash Aberdeen Waterfront Festival | Aberdeen, WA | One day in July | 46° 58'40" N | 123° 47'45" W |
| City of Coos Bay July 4 th Celebration/ Fireworks Over the Bay | Coos Bay, OR | One day in July | 43° 22'06" N | 124° 12'24" W |
| Port of Cascade Locks 4 th of July Fireworks | Cascade Locks, OR | One day in July | 45° 40'15" N | 121° 53'43" W |
| Clatskanie Heritage Days Fireworks | Clatskanie, OR | One Day in July | 46° 6'17" N | 123° 12'02" W |
| Washougal 4 th of July | Washougal, WA | One day in July | 45° 34'32" N | 122° 22'53" W |
| City of St. Helens 4 th of July Fireworks | St. Helens, OR | One day in July | 45° 51'54" N | 122° 47'26" W |
| Waverly Country Club 4 th of July Fireworks | Milwaukie, OR | One day in July | 45° 27'03" N | 122° 39'18" W |
| Hood River 4 th of July | Hood River, OR | One day in July | 45° 42'58" N | 121° 30'32" W |
| Winchester Bay 4 th of July Fireworks | Winchester Bay, OR | One day in July | 43° 40'56" N | 124° 11'13" W |
| Brookings, OR July 4 th Fireworks | Brookings, OR | One day in July | 42° 02'39" N | 124° 16'14" W |
| Yachats 4 th of July | Yachats, OR | One day in July | 44° 18'38" N | 124° 06'27" W |
| Lincoln City 4 th of July | Lincoln City, OR | One day in July | 44° 55'28" N | 124° 01'31" W |
| July 4 th Party at the Port of Gold Beach | Gold Beach, OR | One day in July | 42° 25'30" N | 124° 25'03" W |
| Gardiner 4 th of | Gardiner, OR | One day in | 43° 43'55" N | 124° 06'48" W |

| | | | | |
|---------------------------------------------------|--------------------|--------------------|-----------------|---------------|
| July | | July | N | |
| Huntington 4 th of July | Huntington, OR | One day in July | 44° 18'02" N | 117° 13'33" W |
| Toledo Summer Festival | Toledo, OR | One day in July | 44° 37'08" N | 123° 56'24" W |
| Port Orford 4 th of July | Port Orford, OR | One day in July | 42° 44'31" N | 124° 29'30" W |
| The Dalles Area Fourth of July | The Dalles, OR | One day in July | 45° 36'18" N | 121° 10'23" W |
| Roseburg Hometown 4 th of July | Roseburg, OR | One day in July | 43° 12'58" N | 123° 22'10" W |
| Newport 4 th of July | Newport, OR | One day in July | 44° 37'40" N | 124° 02'45" W |
| Cedco Inc./The Mill Casino Independence Day | North Bend, OR | One day in July | 43° 23'42" N | 124° 12'55" W |
| Waldport 4 th of July | Waldport, OR | One day in July | 44° 25'31" N | 124° 04'44" W |
| Westport 4 th of July | Westport, WA | One day in July | 46° 54'17" N | 124° 05'59" W |

| | | | | |
|----------------------------------------------------------|-------------------|--------------------------------------|-----------------|---------------|
| The 4 th of July at Pekin Ferry | Ridgefield, WA | Saturday before July 4th | 45° 52'07" N | 122° 43'53" W |
| Bandon 4 th of July | Bandon, OR | One day in July | 43° 07'29" N | 124° 25'05" W |
| Garibaldi Days Fireworks | Garibaldi, OR | One day in July | 45° 33'13" N | 123° 54'56" W |
| Bald Eagle Days | Cathlamet, WA | One day in July | 46° 12'14" N | 123° 23'17" W |
| Independence Day at the Fort Vancouver | Vancouver, WA | One Day in July | 45° 36'57" N | 122° 40'09" W |
| Oregon Symphony Concert Fireworks | Portland, OR | One day in August or September | 45° 30'42" N | 122° 40'14" W |
| Astoria Regatta | Astoria, OR | One day in August | 46° 11'34" N | 123° 49'28" W |
| Leukemia and Lymphoma Light the Night Fireworks | Portland, OR | One day in October | 45° 30'23" N | 122° 40'4" W |
| Veterans Day Celebration | The Dalles, OR | One day in November | 45° 36'18" N | 121° 10'34" W |

Dated: November 27, 2018

D. F. BERLINER,

Captain, U.S. Coast Guard,

Acting Captain of the Port Columbia River.

[FR Doc. 2018-26151 Filed: 11/30/2018 8:45 am; Publication Date: 12/3/2018]